

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-87-23

BOARD OF OVERSEERS OF THE BAR

v.

OPINION and ORDER

DAVID F. GOULD

This matter is before the Court pursuant to M. Bar R. 7(e)(6), on an information filed by the Board of Overseers relative to the conduct of respondent, David F. Gould, an attorney at law duly admitted to practice law in the State of Maine. The information charges that respondent has conducted himself in a manner unworthy of an attorney. Specifically, respondent is charged with violating M. Bar R. 3.2(a)(3), (f)(1), (3), (4) and M. Bar R. 3.6(a)(2), (3). The information alleges, in essence, that respondent knowingly assisted a suspended attorney in the unauthorized practice of law and, by doing so, engaged in conduct prejudicial to the administration of justice. Moreover, the information charges that, with respect to the same incident, respondent handled a legal matter without adequate preparation. Respondent denies any violation and requests that the information be dismissed.

Hearing was held before this Court on March 4, 1988. Respondent appeared pro se and the Board of Overseers of the Bar was represented by J. Scott Davis, Bar Counsel. Based upon the evidence presented, this Court concludes that respondent has conducted himself in a manner unworthy of an attorney.

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MAR 9 1988

SUPREME JUDICIAL COURT

I.

The complaint arises from an incident that took place in 1984. In that year, respondent entered his appearance as the attorney for the plaintiff in a case entitled Bertha L. Sullivan v. Patricia L. Dauphinee, Penobscot County Superior Court Docket No. CV-1982-71. Plaintiff's former counsel, Mr. Oscar Walker faced a period of suspension and asked respondent to enter his appearance. In 1982, Mr. Walker had also been suspended and respondent had similarly entered his appearance on this case, and others, during that period of suspension. After entering his appearance in 1984, respondent did not communicate with his client nor did he familiarize himself in any way with the file or the issues involved in the case. In the summer of 1984, the opposing attorney filed a notice to take the deposition of a witness. Mr. Gould obtained a continuance of that deposition because he was only recently involved in the case and was out of state. Ultimately, the deposition was held on November 26, 1984. Mr. Gould attended the deposition with Mr. Walker, who was still under suspension. The transcript of that proceeding accurately reflects that Mr. Walker first attempted to obtain a further continuance until his suspension had been completed. When that proved unsuccessful, he sought to obtain the opposing attorney's consent to his participation in the deposition. When that request failed, Mr. Gould requested an opportunity to confer with Walker. After conference, Mr. Gould agreed to the formalities concerning the deposition and it commenced. During the deposition, Mr. Walker posed all objections

and conducted an extensive cross-examination. At the conclusion of Walker's cross-examination, he and Mr. Gould again conferred. The following exchange then took place on the record:

MR. WALKER: We have no further questions.

OPPOSING COUNSEL: Did you want to ask any?

MR. GOULD: Nothing further.

In his testimony and in his response to the Board of Overseers of the Bar, respondent has attempted to justify his conduct in a variety of ways. It is sufficient to note that this Court finds respondent's testimony totally lacking in candor. His attempted explanation of his conduct verges on the preposterous. This Court finds that respondent knowingly aided Oscar Walker in the unauthorized practice of law at a point in time when he knew that Mr. Walker was suspended from practice. Respondent rendered his assistance for the purpose of permitting Mr. Walker to evade and circumvent a lawful order of suspension. Moreover, this Court finds that respondent attended the deposition without any preparation and that he abjectly failed to employ any care and skill in the representation of his client.

The purpose of a proceeding under the Maine Bar Rules is "not punishment but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties." M. Bar R. 2(a). The present case involves a conscious and blatant attempt to undermine the very system that is designed to protect, the public and the courts. For an attorney

to lend his assistance to a suspended attorney to permit him to circumvent a lawful order of the Court is a matter of extreme seriousness. Although respondent has no prior disciplinary record, the severe nature of this violation requires the imposition of a substantial period of suspension. It is, therefore, ORDERED that respondent, DAVID F. GOULD, is suspended as an attorney and counsellor of law from the practice of law in all of the courts of this State for a period of six months. Said period of suspension is to commence 30 days from the date of the entry of this Order.

It is further ORDERED that on or before the effective date of this suspension, respondent, shall report to the Court the action taken by him to comply with Rule 7(n) of the Maine Bar Rules.

Dated: March 8, 1988



Daniel E. Wathen
Justice, Supreme Judicial Court

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SUPREME JUDICIAL COURT